

General Information Letter: Reimbursement for commuting expenses excluded from federal adjusted gross income is similarly excluded from Illinois base income.

December 3, 1999

Dear:

This is in response to your letter dated October 21, 1999 in which you request a Private Letter Ruling. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information we have enclosed a copy of 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department.

Although you have not specifically requested either type of ruling, the nature of your question and the information provided require that we respond only with a GIL.

In your letter you stated:

This letter requests information on the state tax consequences of the use of a pretax salary reduction plan for parking fees under Section 132(f) of the Internal Revenue Code.

Following the enactment of the Transportation Equity Act of the 21st Century in June of 1998, the IRS confirmed that employers can offer employees a choice between cash and a tax-free reimbursement of parking, mass transit fares and van pooling expenses, up to specified monthly limits. Employees electing tax-free reimbursement of parking, etc. would receive their reimbursement on a pretax salary-reduction basis. The reimbursement would be free of federal income, FICA, and FUTA taxes.

The question I have is, "how will the state treat an employee who elects to reduce his/her salary for state income and SUTA tax purposes? I assume that employees electing to receive cash will be treated the same as for federal purposes, i.e. the cash is taxable for both state income and SUTA purposes.

Please note that the cash vs commuting reimbursement choice must be offered under a standalone plan and not as part of a Section 125 cafeteria plan.

Please forward a copy of this letter to the state unemployment department or state income tax department if necessary.

DISCUSSION

This letter is only in response to your income tax question. As regards the issue of SUTA, the Illinois Department of Revenue does not administer that tax but I am forwarding your letter to the Department of Employment Securities for a separate response. As for the Illinois income tax, your question concerns the calculation of base income. Base income is defined by section 35 ILCS 5/203(a) which states that "[i]n the case of an individual, base income means an amount equal to the taxpayer's adjusted gross income for the taxable year as modified by paragraph 2." In other words, the adjusted gross income calculated on one's federal tax return is used as a starting point for the Illinois income tax. To this figure certain subtractions or additions are made pursuant to §203. Paragraph two of §203(a) lists the additions and subtractions to adjusted gross income. Nowhere is the IRC §132(f) exclusion from income mentioned as a source of income required to be added back. Accordingly, as the travel reimbursement is excluded from adjusted gross income and no provision of the Illinois Income Tax Act adds the income back to the calculation, you are allowed to exclude this sum from your Illinois base income.

I hope that this has been helpful to you. If you have additional questions please feel free to contact me at the above address.

Very Truly Yours,

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